

UNITED STATES DEPARTMENT OF AGRICULTURE

Farm Service Agency

P.O. Box 2415

Washington, DC 20013-2415

Notice FC-94

1951-S

For: State and County Offices

**Review Checklists for Civil Rights, ECOA, and Farm Credit
Primary Loan Servicing Compliance**

Approved by: Acting Administrator



Note: No foreclosure sales are to proceed until compliance with this notice.

1 Overview

A

Background

Current legislation requires that delinquent Farm Credit borrowers be given all of their primary loan servicing options before FSA can take adverse actions leading to foreclosure. FSA is prohibited from discriminatory treatment of borrowers and is precluded from taking adverse action when there are unresolved complaints of discrimination or inequitable treatment. A review is needed to determine whether inconsistencies in program delivery are evident.

B

Purpose

This notice provides checklists for Field Offices to use to ensure that all borrower rights have been given for primary servicing and that no evidence of discrimination or inconsistencies exist as certified by SED before submitting the case to legal counsel for foreclosure.

Disposal Date

June 1, 1997

Distribution

State Offices; State Offices relay to County
Offices and Ag Credit Teams

12-18-96

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2 Action

A Immediate Actions

SED's will immediately conduct reviews using Exhibits 1 and 2 on all cases currently scheduled for foreclosure and hereafter submitted to Department of Justice (DOJ) and legal counsel for foreclosure.

In some cases, pending foreclosure sales may be delayed until the review is completed.

Local Agriculture Credit Officials will complete Exhibit 1 on all cases requesting to be processed for primary loan servicing.

B Checklist for Primary Loan Servicing

Exhibit 1 is a checklist to be used by the local Agriculture Credit Official when processing all requests for primary loan servicing according to FmHA Instruction 1951-S. Once an application has been received, the checklist should become a part of the borrower's running case file record. Credit Officers shall complete sections I and II for all borrowers. Complete Sections III and IV as appropriate.

SED's or their designee should review sections I and II of the checklist as part of the writedown or buyout approval process. State Offices are to establish a followup system to ensure corrections and deficiencies have been completed.

C Checklist for Review of Inconsistencies

Exhibit 2 must be completed and signed by SED certifying that no evidence of inconsistencies or discrimination complaints, written or oral, exist before submitting a case to legal counsel for foreclosure.

If such evidence is found, DAFCP and Director, CR&SBUS will be immediately contacted for guidance through Area Office.

No further adverse actions will be taken by FSA on the case until the inconsistencies have been corrected and the discrimination complaints resolved.

Continued on the next page

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2 Action (Continued)

D

Cases Currently Held by Department of Justice

DOJ cases will be reviewed as follows.

- Review priority will be given to foreclosure cases held by DOJ.
 - If there is not sufficient time to complete the review before the foreclosure sales date, DOJ will be immediately contacted through regional OGC and requested to delay the sale in order for the State Office to complete the review of Exhibits 1 and 2. Delay of the sale is solely within the discretion of DOJ.
 - For any DOJ cases scheduled for foreclosure sale, the State Office is expected to complete the review within 5 workdays. This may remove the need to request a delay from DOJ.
 - If inconsistencies are found in a DOJ case, immediately notify DOJ through OGC of the findings and request that the foreclosure sale be postponed until the inconsistencies are corrected and discrimination complaints resolved. Also, DAFCP, the Director, CR&SBUS, and Area Office must be contacted.
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E

Priority for Reviews

State Office reviews on foreclosure cases will be done in the following order of priority:

1. Cases currently held by DOJ scheduled for immediate sale.
 2. Cases scheduled for immediate sale by the non-judicial system. A sale will not be held until the review is completed and all corrective actions taken.
 3. All other cases previously submitted to DOJ and legal counsel for foreclosure.
 4. Any case hereafter submitted to DOJ or legal counsel requesting foreclosure action.
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F

Reporting Requirements

Copies of Exhibit 2 will be submitted to DAFCP, Director, CR&SBUS, and the appropriate Area Office immediately upon certification by SED.

G

Contact

If there are any questions, State Offices shall contact LSPMD through Area Office.

PRIMARY LOAN SERVICING CHECKLIST

Borrower's Name:

I. Complete Application

- _____ 1. Attachment 2 or 4 of Exhibit A to FmHA Instruction
- _____ 2. Form FmHA 410-1 Application for FmHA Services (Current Financial Statements on all liable parties required.)
- _____ 3. Form FmHA 410-8 Applicant Reference Letter (if applicable.)
- _____ 4. Form FmHA 410-9 Statement Required by the Privacy Act
- _____ 5. Form FmHA 431-2 Farm and Home Plan (FHP)
- _____ 6. Form FmHA 440-32 Request for Statement of Debts and Collateral (if applicable.)
- _____ 7. Form FmHA 1910-5 Request for Verification of Employment (if applicable.)
- _____ 8. Form FmHA 1924-1 Development Plan (if applicable.)
- _____ 9. Form AD-1026 Highly Erodible Land Conservation (HELC) and Wetland Conservation (WC) Certification
- _____ 10. Form CPA-026 Highly Erodible Land and Wetland Determination
- _____ 11. Form FmHA 1956-1 Application for Settlement of Indebtedness (if applicable.)
- _____ 12. Production history for the last 5 years immediately preceding the year of production. Production history must be reconciled with Farm Program (formerly ASCS) record (if available.)
- _____ 13. Income and expense history for the last 5 years immediately preceding the year of application.
- _____ 14. Copies of income tax returns and any needed supporting documents for the last 5 years immediately preceding the year of application.

II. Application Processing

- _____ 1. The date of the complete application has been entered on Form FmHA 410-1 as; "Date of Complete Application: mm/dd/yy." This date has also been entered into the AGCREDIT program.
- _____ 2. Eligibility was determined and is recorded in case file running record. Documentation is included concerning \$300,000 writedown or writeoff and debt forgiveness limitation requirements of FmHA Instruction 1951-S.
- _____ 3. Exhibit E to FmHA Instruction 1951-S with Attachment 1 or 2 of Exhibit E to FmHA Instruction 1951-S was provided to the borrower. Applicable in most cases where a complete application was filed and loans could not be restructured. Attachment 2 is to be used for all applications submitted on or after November 28, 1990.
- _____ 4. A current, properly completed real estate and/or chattel appraisal was obtained on all FmHA security and nonessential assets. An appraisal of nonessential assets is only required for applications filed after November 28, 1990.
- _____ 5. A current automated FHP with all appropriate dates and signatures has been completed.
 - _____ a. Nonfarm and other farm income has been verified and correctly entered on the FHP.
 - _____ b. All debts and collateral have been verified and correctly entered on the FHP. A credit report (obtained at FSA expense) is included in the case file.
 - _____ c. The projected income, expenses and production figures are based upon the borrower's documented 5-year history in accordance with FmHA Instruction 1924-B.
 - _____ d. The unit commodity prices used on the FHP are documented and comply with FmHA Instruction 1924-B.
- _____ 6. Credit and Financial Analysis Forms are completed as necessary.
- _____ 7. Form FmHA 1962-1 and Security Agreements or Crop and Chattel Mortgages were reviewed verifying all chattel Security has been properly accounted for.
- _____ 8. A Debt and Loan Restructuring System (DL) Status Screen was obtained with an accrual date the same as the proposed loan servicing date.

- _____ 9. The correct version of DALR\$ was utilized, and the DALR\$ Analysis Report was signed and dated by the local Agriculture Credit Officer.
- _____ a. The date servicing actions were requested and the proposed loan servicing date were correctly entered.
- _____ b. The correct discount rate, interest rates and net recovery constants were used in the DALR\$ calculations.
- _____ c. The "Balance Available" and "Payments on non-FSA Debt" in DALR\$ correspond to the figures from Tables J and K of the FHP, and if applicable, Notice FC-60, Exhibit 1.
- _____ d. The projected loans on the FHP have been correctly entered into DALR\$.
- _____ e. The correct interest rates (original and existing), terms and unpaid principal and interest (including noncapitalized interest for DALR\$ Version 4.2) figures for all FCP FSA debts were entered into DALR\$.
- _____ f. The entries pertaining to existing loans regarding limited resource rates, loan type, existing payment schedule, and consideration for loan servicing are correct.
- _____ g. The value of the borrower's assets as documented by appraisals have been correctly entered into DALR\$.
- _____ h. Prior liens and amounts of prior liens have been verified and correctly entered into DALR\$.
- _____ i. For all applications received on or after November 28, 1990, the value of nonessential assets and properly documented unreleased security has been correctly entered into DALR\$.

III. Processing Writedown of FmHA Debt

- _____ 1. Attachment 1 or 2 of Exhibit F to FmHA Instruction 1951-S was signed by the borrower. Attachment 2 will be used for all applications received on or after November 28, 1990.
- _____ 2. Exhibit D to FmHA Instruction 1951-S, "Shared Appreciation Agreement," was properly prepared and executed when the loan(s) was secured by real estate.
- _____ 3. Form FmHA 1940-17, "Promissory Note" was properly prepared and executed.
- _____ 4. Form FmHA 1927-1 (State), "Real Estate Mortgage," or "Deed of Trust," was properly filed, if applicable.
- _____ 5. For all applications received on or after November 28, 1990, a lien was taken on other assets as required of FmHA Instruction 1951-S.
- _____ 6. ADPS Transactions:
 - _____ a. 5H, "Remove Descriptive Codes" (if applicable).
 - _____ b. 1M, Reschedule, Reamortize, Consolidation, as applicable.
 - _____ c. 3R, "Shared Appreciation Writedown".
 - _____ d. 5W, "Record/Reverse Loan Deferral", (if applicable).
 - _____ e. 5G, "Establish Descriptive Code," (for deferral, if applicable).
- _____ 7. Complete AGCREDIT Borrower History Report.
- _____ 8. Original Promissory Note(s) are marked, "Rescheduled or Reamortized with Writedown Debt," and stapled to the new Note(s).
- _____ 9. The Management Record System (MRS) was updated for 24-month review of County Records.

IV. Processing Buyout

- _____ 1. Attachment 5-A or 6-A of Exhibit A to FmHA Instruction 1951-S was signed and returned by the borrower. Attachment 6-A to be used for all applications submitted on or after November 28, 1990.
- _____ 2. Form FmHA 451-2, "Schedule of Remittance" was properly prepared to process the buyout payment.
- _____ 3. Form FmHA 1927-1 (State), "Real Estate Mortgage," or "Deed of Trust," was properly completed and filed if the FSA loan(s) was secured by real estate. The best lien obtainable should be taken and old security instruments released.
- _____ 4. ADPS Transaction 3Q, "Buyout"
- _____ 5. Complete AGCREDIT Borrower History Report.
- _____ 6. The Management Record System (MRS) was updated for 24-month review of County Records.

Date

Signature of local Ag Credit officer
who reviewed case

Date

Signature of SED or designee certifying
that borrower received all primary loan
servicing options (State Office review
required only in case of approval/denial
of writedown/buyout or if submitted for
foreclosure).

**REVIEW CHECKLIST FOR DETERMINING INCONSISTENCIES
IN DELIVERY OF FARM CREDIT PROGRAMS**

This checklist is to be completed by each State FSA Office and certified by SED so that no evidence of discrimination or inequitable treatment exists in delivery of farm credit programs before submitting the case to legal counsel for foreclosure. ^{1/}

If inconsistencies are found in the SED's review, the DAFCP and Director, CR&SBUS will be immediately contacted for guidance. No further adverse actions will be taken by FSA on the case until the issues have been resolved.

- _____ 1. Review the running case file for any evidence or suggestions that would show inconsistencies exist that indicate the borrower's account was handled differently than other borrower accounts of similar status or that borrower expressed oral or written concerns or complaints relating to discrimination or inequitable treatment.
- _____ 2. Review loan making and servicing time frames to determine whether the borrower's requests were handled differently from others in the local servicing area which would indicate inconsistencies.
- _____ 3. Review other FSA foreclosure sales in the area to determine whether the subject case is handled in the same manner.
- _____ 4. Review the history of the local servicing area to determine whether cases of discrimination or inequitable treatment have occurred. If such a history exists, the subject case will be forwarded to DAFCP for review.

_____ I certify that evidence of inconsistencies do not exist in this case and that foreclosure proceedings should continue.

_____ There appears to be inconsistencies and, therefore, I cannot certify that the borrower has been treated fairly. The case will be forwarded to DAFCP for further review.

Date

SED

^{1/} Discrimination under the Equal Credit Opportunity Act (ECOA) does not require discrimination on the basis of race, sex, national origin, etc, but may be expressed solely by treating one borrower differently than another similar situated borrower to the first borrower's disadvantage.